

**REMARKS**

Claims 1-11 have been cancelled. Claims 14-17 have been amended. Claims 18 and 19 have been added.

**Claim objections**

Claims 15-17 have been amended to depend from claim 14, eliminating the need for the objection.

**35 U.S.C. §102 rejections**

Claims 1-2 and 4-7 are rejected under 35 U.S.C. §102(b) as being anticipated by McDonald. Withdrawal of the rejection is requested in view of the amendments made to the claims and the following remarks.

Claims 1-11 have been cancelled rendering the rejection thereof moot. New claims 18 and 19 have been added to replace claims 1-11 and therefore will be discussed in view of McDonald. Claim 18 is not anticipated by McDonald because it specifically claims a framework and a separate handle coupled thereto. McDonald does not teach or suggest a separate handle, and in fact, does not teach a handle at all. McDonald simply teaches a tubular housing having a cane shape. The curved end is not a handle, and is not separate from the rest of the tubular housing. The

curved end is a ball dispenser intended to dispose a golf ball into a golfer's hand.

Additionally, claim 18 includes functional language which further defines the elements of the claim. Specifically, the framework is "for supporting an individual and aiding ambulation thereof". This limitation is clearly not taught or suggested by McDonald, as the device of McDonald is simply a dispensing device intended to be carried in the golf bag. Thus, the structure does not need to be able to support or aid an individual for ambulation. Furthermore, the handle is "for grasping by the individual". Again, this is not taught or suggested by McDonald, since there is no handle, just a curved dispensing end.

It is noted here that functional language in the body of a claim is properly given patentable weight. In this claim, the elements are defined by their structure, and further defined by their function. As stated by the CCPA:

We take the characterization "functional", as used by the Patent Office and argued by the parties, to indicate nothing more than the fact that an attempt is being made to define something (in this case, a composition) by what it does rather than by what it is (as evidenced by specific structure or material, for example). In our view, there is nothing intrinsically

wrong with the use of such a technique in drafting patent claims. Indeed we have recognized in the past the practical necessity for the use of functional language. (*In re Swinehart*, 439 F.2d 210, 169 USPQ 226, 228-29 (C.C.P.A. 1971)).

Continuing with this analysis, the device of McDonald also does not inherently have or teach this structure. In this regard, the CCPA has stated that "[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." (*In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (C.C.P.A. 1981)) Thus, the missing element or function must necessarily result from the prior art reference. The functional language claimed clearly does not necessarily result from McDonald. The tubular housing of McDonald can be vastly insufficient for the function claimed. Specifically, the device of McDonald does not necessarily have structure sufficient to support an individual and aid in their ambulation. Also McDonald does not necessarily have a handle structure for grasping by an individual, and in fact has no handle at all.

Thus, since each and every element of the invention as claimed in claim 18 is not taught by McDonald, there can be no anticipation.

Claim 19 depends from claim 18 and is allowable for at least the same reasons. Additionally, claim 19 claims a frame work including a tubular member having a window, and a tubular segment carried therein. These elements are clearly not present in McDonald.

35 U.S.C. §103 rejections

The combination of Sokolis and McDonald is improper. If Sokolis is modified to include decorative filler carried by the legs and viewed through the windows, light will not be emitted by the windows. If light is not emitted from the windows, Sokolis is rendered inoperable for its intended purpose. Additionally, McDonald is improperly combined, because it is non-analogous art and thus lacking in any incentive for the combination. The CCPA has explained the policy as follows:

In resolving the question of obviousness under 35 U.S.C. 103, we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved. The rationale behind this rule precluding rejections based on combination of teachings of references from

nonanalogous arts is the realization that an inventor could not possibly be aware of every teaching in every art. (In re Wood, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979)).

In order to determine if a reference is reasonably pertinent, the Federal Circuit has stated that:

[a] reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem . . . If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem . . . [I]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it. (In re Clay, 966 F.2d 656, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992))

McDonald does not have an identical purpose as that of the claimed invention. The purpose of McDonald is to store and dispense golf balls from a cane shaped tube carried in a golf bag. The invention as claimed is an ambulatory device having structure and problems completely unrelated to a gold ball dispensor. Thus, McDonald would not be considered and is improper for use as a 35 U.S.C. 103 reference. However, even if the combination is made, the

present invention is not obvious, as will be discussed below.

Claims 1-2, 4-8, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sokolis et al. in view of McDonald. Applicants respectfully traverse this rejection. Claims 1-2 and 4-8 have been cancelled, rendering moot the rejection thereof. Claims 12, 14 and 15 are not obvious because the combination of references is improper as detailed previously.

Claims 18 and 19 have been added to replace claims 1-11, and will be discussed in view of this rejection.

Sokolis teaches walking assistance apparatus with lights for illumination the ground. Specifically, the legs of the device include windows near the bottoms, through which light from a bulb is emitted. The light is carried in non-transparent portions of the legs. If the entire leg were transparent, the light would not be emitted properly, and would, in fact, inhibit the user from seeing the ground.

Claim 18 of the present application claims a tubular segment of transparent material carrying a decorative filler. This is not taught or suggested by Sokolis. Sokolis must limit the transparent portion to a window, not

a segment of the framework. Thus, claim 18 is not suggested. Furthermore, if the transparent housing of McDonald is used with Sokolis, sokolis would not illuminate the ground as intended, rendering it inoperable for its intended purpose. Additionally, Sokolis does not teach or suggest a decorative filler. The presence of a decorative filler which can be viewed through the window, would render it inoperable for its intended purpose. The filler would block the emission of light.

Claim 19 depends from claim 18 and is allowable for at least the same reasons. Additionally, claim 19 is also not obvious in view of the references because it claims a tubular member with a window and a tubular segment carrying a decorative filler positioned within the tubular member and visible through the window. Neither reference teaches or suggests these elements.

With respect to claim 12, legs having windows are claimed. A decorative element is carried within the legs so as to be viewable through the window. Sokolis does not teach this element because it must have a clear, un-blocked window to permit light to be emitted therefrom. The presence of a decorative element viewable through the window would render it inoperable for its intended purpose.

Claim 13 depends from claim 12 and is allowable for at least the same reasons.

Claim 14 has been amended to include decorative elements including transparent tubular segments carrying decorative filler. The transparent tubular segments are carried within the framework and visible through windows in the framework. Again, aside from the combination being improper because of non-analogous art, the combination is not suggested as the inclusion of a decorative filler in Sokolis would render it inoperable for its intended purpose. Additionally, neither reference suggests a tube carrying decorative filler carried within the frame and visible through the windows.

Claim 15 depends from claim 14 and is allowable for at least the same reasons.

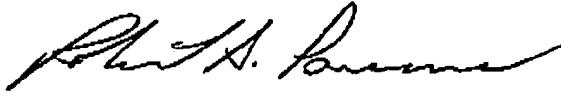
Claims 9-10, 13, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sokolis et al. in view of McDonald and further in view of Chen. Claims 9-10 have been canceled. Claims 13, and 16-17 are not obvious for the reasons stated above with respect to claim 12, and further because Chen does not teach the missing elements.

SUMMARY

Since the combination of the references is improper, and none of the applied references disclose apparatus teaching or suggesting applicant's claimed structure and since none of the applied references can achieve the functions of the present invention, applicant believes that claims 12-19 are in condition for allowance.

In view of the foregoing, it is submitted that each of the claims is in condition for allowance. Withdrawal of the rejections and allowance of the claims is respectfully requested. Should there be any questions or remaining issues, Examiner is cordially invited to telephone the undersigned attorney for a speedy resolution.

Respectfully requested,



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